1944. File No. S. Dwr. 2/44

Financial

Legal DEPARTMENT

A BRANCH

Subject:— Suits Dharwar

C.S. No. 210 of 1943

Mohanlal Chandulal Chavan — Plff.

V/S

The Province of Bombay and four others — Defts

Claim, Rs. 65/-

P 50 (E.K.)

File No. S Dwr. 2/44

Std. Scott. Slip St.-B

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Letter.

Subject :- Dharwar L.C.Suit No. 210/1943.

To

The Commissioner
Southern Division Belgaum.

No. L.A.N.-430. Dhapwar, 2/15th Nov. 1943.

In submitting herewith a copy of the D.G.P.'s letter No. 595 of 26.10.1943 along with the papers of the case, I have the honour to request you to kindly move Government to accord sanction for the defence of the suit on the lines indicated by the D.G.P.

Sd/- S.Aminuddin,
Collector of Dharwar.

No. L.S.T.-294.
Office of the Commissioner S.D.
Camp Kumta, 25th November 1943.

Submitted with concurrence.

1126

Remembrancer of Legal Affairs.

Commissioner S.D.

A/3-12-43

H.

Copy of the letter No. 595 dated 26th October 1943, from District Government Pleader , Dharwar.

.....

" I have the honour to submit herewith chronological statement of facts, grounds of defence and draft written statemer in duplicate in the following suit together with the papers of the case in three files in accordance with Rule 118 of the Law Officers Rules, for favour of sanction of the defence of the suit at an early date.

1. The suit is numbered as Long Cause Civil Suit No. 210 to [illegible] 1943.

2. The suit has been filed in the court of the First Class sub-Judge at Dharwar.

3. Names of the parties: Mohanlal Chndulal Chavan. age 20 caste Kshtria, occ. trade Vahiwatdar of Messrs. Tukaram Narasingarao Chavan of Gadag-- Plff.

Vs.

The Province of Bombay. Deft No. 1 and 4 others.

4. The valuation of the suit is Rs. 65/-
5. The suit was filed on 16/6/1943.
6. The suit has been fixed on the 24th Nov. 1943 for putting in written statement on behalf of defendent No. 1 (Govt)

It is submitted, therefore, that sanction may kindly be accorded to the defence of the suit with such amendments and alterations at an early date.".

L.C.Suit No.210 of 1943.

Plff:-Mohanlal Chandulal Chavan, a firm of Messrs Tukaram Narasingrao Chavan of Gadag.

Vs.

Deft:-The Province of Bombay and four others.
No.1

Chronological statement of facts.

1. The suit relates to encroachment on a portion of Government land forming part of Karwar-Bellary road measuring 78 Sq. yds by 129 Sq.yds in C.T.S.Nos. 3852/a/1 and 3852-B/1-1- in the town of Gadag, Dist. Dharwar. The encroachments are shown in red and blue respectively in the sketch at page 131. The land encroached upon is at the junction of Gadag-Pala-Badami road and Karwar Bellary road. On the red portion is a compound wall and some space towards the south. This red ✗ portion measures 100' X 14' and is a triangular piece. The portion shown in green is an open site and is also triangular.

Sketches at P.131 & 161 and the report of the D.I.L.R. Dharwar No.274 dated 7-3-38 is at P.148 (reverse) and P.149 (Exhibit I).

P.17 Gadag Mamlatdar's report dated - 18-5-36.

2. The C.T.S.Nos.3852-A/1 and 3852-B/1-1 and several other C.T.S.Nos. originally formed part of agricultural revision S.Nos. 177 of Gadag. The total area of the agricultural land appears originally to be about 11 acres and 3 gunthas. The area of 8 guntha and 64 Sq.yds out of this agricultural land shown in blue towards the west of the above mentioned C.T.S.No in the sketch at page 131 was merged in the Pala-Badami road. Part of the area so merged and adjoining to the west of the C.T.S.No. 3852-A/1 is 153 sq. yds as shown in the sketch at page 161 by the letters A.B.C.D.. It appears from the report of the D.I.L.R. Dharwar, No.274 dated 3rd July 1938 that between 1877 1914, the P.W.D. widened the Pala-Badami road which was in existence even prior to the introductionof revision survey in or about 1876-1877 and while so widening a portion of the private agricultural land

P.195 reverse.

R.S.No.177 measuring 8 G. 64 sq.yds was wrongly included in the said road. The report further shows that the C.T.S. map prepared in 1914 shows that the portion of the private agricultural land R.S.No.177 merged in the Pala Badami - road has been altogether excluded from the said S.No. As per tippan extract, the boundary of the agricultural land should have been extended up to the black dotted line - shown in the sketches at P.129 and 223, while as a matter of fact, the boundary of the land in the actual possession and wahivat extends only as far as the thick black line - with the result that there is a difference in the revenue and C.T.S. records. Big trees have been planted on the road and there is also a puttar as shown by the red dotted line at page 129 of the sketch. The report of the D.I.L.R. further says that there is no record to show when this - land was acquired by the P.W.D. Therefore, the D.I.L.R. reported that the claim of the owner of R.S.No.177 (including plff) to the strip of the agricultural land thus merged in the Government Pala-Badami road is extinguished by lapse of time.

Please see the sketch at P. 223 & 129.

P.7 & 9

3. It may be here noted that the land R.S.No.177 was kept and shown in the revenue records as agricultural till the year 1926 when the Collector gave in his No. N.A.S.R.29 of 6-10-1926 permission for use of the land for non-agricultural purposes. One Hansraj Chapsi and Mallashi Lakhamshi were the joint purchasers in 1918 of 5 acres 6 gunthas assessed at Rs.5-9-0 out of - agricultural R.S.No.177 of Gadag from Basappa bin Andaneppa Hombal, the original owner. On 29th April 1918, they (the purchasers) applied to the Collector Dharwar for permission to build on a portion of the land (1 - A - G 21) a compound wall. On 21-6-1918 the - Collector granted permission on certain conditions. The applicants subsequently applied on 26-10-1921 for permission to build a structure on 15 gunthas out of 1 acre and 11 gunthas as previously allowed. This permission was granted on 20-5-1923.

P.138 D. [illegible]'s report [illegible] July 1939.

P.39 & 40 file III.

Sketch at P.6 f: II, blue portion in 177 (P.1 file I

P.7 file II.

P.28 file II.

7

On 4th July 1920 a sanad under section 48 Bom.L.R.C.

See the plan on the reverse of the sanad P.43 file II.

was granted to Hansraj and Malsi. The sanad originally contained permission to build on an area of 1815 sq.yds. out of R.S.No.177 on an annual payment of N.A. assessment of Rs.18-12-0.

4. In 1925 Hansraj and Malsi erected a compound wall (which is still in existence on the encroached

P.46 file II.

area). On 24-2-1925 the surveyor of Gadag city submitted a report to the Mamlatdar, Gadag, that the said two persons had used an area of 172 sq yds in excess of that for which N.A. assess-

P.48 file II.

ment had been granted. On 16-5-1925 the Mamlatdar, Gadag, submitted a report to the P.O. III Division that the said two persons were using an area of 162 sq, yds (19 & 41 sq yds) in excess of that for which N.A. permission had been grantedbut they may

Reverse of P.49 file II.

be so allowed to do on an additional payment of altered assessment of Rs.1-11-0. On 22-5-1925 the D.D.C.III Division agreed with the proposal of the Mamlatdar and forwarded the matter to the Collector for sanction.

5. On 10th June 1925 the Collector sanctioned the proposal of the D.D.C. stated above and obviously granted permission to use the excess area of 162 sq.yds for N.A. purposes. Accordingly in the sanad granted on the 4th July 1940 (P.43 file II) the excess area of 162 sq.yds was also mentioned and the sanad was modified. An additional copy of the annual N.A. assessment Sanad was given to Hansraj

P.52 file II.

Malsi.

6. It may be noted here that it was found in 1939 as reported by the D.I.L.R. on 22-12-1939 in reply to the reference made by the latter that the area of 78 sq yds now in dispute was included in the sketch drawn on the sanad dated 4th July

P.43 file II

1940 and in the area of 1815 sq yds. for non-agricultural use of which permission had been -

granted by the Collector. This sketch according to the D.I.L.R.'s report, was prepared in accordance with the City Survey map in which part of the public road area (78 sq.yds now in dispute) was wrongly - shown as included in the private property i.e. (agricultural S.No.177) and confirmed by the inquiry officer. (vide map at P.22 file I)

7. On 24-4-1926 the papers were sent to the D.I.L.R. for correction of survey records. On 10-2-27 the correction was made. Reverse of P.52 file II.

8. On 12th February 1927 Hansraj and Malsi applied to the Mamlatdar, Gadag, stating that the C.T.S.No.3852-A had been entered in their joint names and that they divided the plot between themselves, the northern half going to the share of Hansraj and the southern going to the share of Malsi; that they were to ~~xxxx~~ transfer their shares and requested, therefore, that their names should be shown in the C.T.S. records separately in respect of each share. Accordingly the papers were sent to the City Surveyor, Gadag, who submitted a report to the Mamlatdar, Gadag, on - 20-3-1928 that Hansraj's share was numbered as C.T.S. No.3852A/1 and that of Malsi was numbered as C.T.S. No.3852B/2 . Reverse of P.52 file II. P.133 & 147 P.149 file II.

9. Subsequently it appears that in 1928-29 ~~xxx~~ plot C.T.S.No.3852A/1 (now in suit) was sold by Hansraj to one Visanji Kuvarji Shet who in turn sold it on - 22-4-1930 to one Madivalappa Basappa Shettar from whom the present plff purchased this plot i.e. C.T.No.3852A/1 wher a bungalow and compound wall exist and which is shown in the sale-deed to measure 981 sq.yds. and C.T.S.No.3852B/1-1 which is a vacant site and which is shown to measure 8 G. and 23 sq.yds in the sale-deed and ~~asx~~ sold for Rs.13500 on 19th August 1930. Sale-deed P.115-119 loose file.

10. It may be noted here that it was in 1930 that the Collector gave permission to use C.T.S.No.

9

3852B/1-1 i.e 177/1 for N. A. purposes and accordingly on 16th May 1930, a sanad under section 48 Bom.L.R.C. was issued to Visanji Kuvarji in respect of this plot measuring 9 gunthas and 96 sq.yards as shown in the sanad of that date. The measurements in the sanad and the sale deed of 22-4-1930 do not appear to tally. It may also be noted that on the reverse of page 121 (loose pages) a sketch of the C.T.S. No. 3852B/1 is given, but it purports to show the northern boundary adjoining the Karwar-Bellary road in a straight line which is wrong according to the present sketches of 1929.

P.121-123 loose file.

P.23 file I
sketch P.15 file I.

11. On the 5th September 1933, the A.L.C. III Gn. recommended to the Collector, Dharwar, to grant permission to the applicant Ramappa Dharmappa Gaval of Gadag to build a shed on C.T.S.No.385/B/1/3 out of S.No.177 on certain conditions. On 9th November 1933, the Collector granted permission on certain conditions and a sanad was issued

P. 6 file I.

12. On 28-2-1935 the Mamlatdar, Gadag, sent the papers to the D.I.L.R., Dharwar, stating that the Collector granted permission to build on C.T.S. No.3582B/1-4 x in S.No.177/2 and requested that the survey records should be corrected accordingly. The Mamlatdar pointed out that there was a differen of in the area in the respect of of C.T.S.No.385/B /1/3 as the C.T.S. records showed 19 gunthas and 14 yards while the village record showed 22 gunthas and 15 yards.

P.32 file I

13. The D.I.L.R. forwarded the papers to the surveyor on 9-2-1936. The Subveyor submitted a report to the D.I.L.R. that while measuring the plots it was found that there was a difference in the original area of the S.NO.177 and its present area. The real total area of S.No.177 was 11 acres 3 gunthas, but as a matter of fact about 16 gunthas 47 sq. yds out of it on the western sides of the

S.No. as shown by the dotted line in the sketch at page 42/A had been merged in the Government road. (Pala--Badami road) thus the balance of the area of the said S. No. remained only 10 acres 26 gunthas and 74 sq.yds. The surveyor further pointed out that a part of the area of the road to the north of the S.No. and the plots C.T.S. Nos.3852/A.G.1 and 3852B/1/1 now in suit measuring i i guntha 57 sq.yds and 1 guntha 39 sq yds had been includ--ded in the said plots (of course by mistake). The surveyor, therefor recommended that action should be taken in this respect. He also pointed out that the several differences in the records and the actual state in respect of the area.

Statement at P. 42/B

ketch at P.42.

14. On 25-2-1936 the D.I.L.R.Dharwar, submitted a report to the Prant III Division, that the C.T.S. records and the village records showed different areas in respect of R.S.No.177 and this was due to a portion of the S.No. having been merged in the road lying to the west of the land that C.T.S. sanads have been issued in respect of the plots after survey inquiry. The D.I.L.R. therefore requested for orders changing the D.S.O. records in accordance with the C.T.S. records, so that both might tally. The D.I.L.R. further reported that a portion of the Government road - area to the north of the land (S.No.177/1A and 177/B - consisting of C.T.S.plots C.T.S.No.3852/1 and 3852B/1/1 had been included in those plots and a compound wall existed therein. The D.I.L.R. therefore asked for orders whether the road-area should be excluded from the plots.

15. On 16-5-1936 the Assistant Collector III Division requested the Mamlatdar, Gadag, to report - after personal inspection whether the owners of C.T.S. Nos.3852A/1 and 3852B/1-1 and another had encroached upon the road side as shown in blue to the north of these S.Nos. in the sketch at page 42B, and if so, whether the area should be excluded from the portion of the respective S.Nos.

16. On 14th July 1936, the Mamlatdar, Gadag,

issued a notice to Chandulal Tukaram Chavan Wahivatdar of the plaintiff firm stating in writing before the Mamlatdar that he was a purchaser of the two plots C.T.S.Nos.3852/A-1 and 3852B/1-1- with the buildings existing thereon from one Madivalappa Sudi and his sale was dated 19th August 1930. He, therefore, did not know of any encroachment and if there was any encroachment, he was willing to pay fine and ground rent.

17. On 24-9-1936 the Mamlatdar, Gadag, submitted a report to the Assistant Collector III Division, that the C.T.S.Nos.3852A/1 and 3852B/1-1 belonged to the

P.67

plff, that Chandulal the Wahivatdar of plff's firm stated that if the building existed on the area, he would pay occupancy price but if only the compound wall existed he would only pay rent. The Mamlatdar further reported that C.T.S.No.3852B/1-1- was an open space and that therefore the area encroached upon in this plot should be excluded from the plot and the C.T.S. map corrected accordingly. The Mamlatdar further reported that in respect of C.T.S.No.3852A/1, the owner had encroached upon Government road to the north of the plot by constructing a compound wall. The Mamlatdar recommended that the site encroached upon might be given to the plff on payment of occupancy price, fine and rent as the encroachment had been made several years ago and as the sanads regarding C.T.S. had been issued showing the encroached portion to be in possession of the holder, but as the encroacher was unwilling to pay occupancy price, fine and rent, the encroachmen may be ordered to be removed. The area wncroached upon

P.69 file I

was reported to be 180 sq. yds.

18. On 7th November 1936 the Assistant Collector

P.68 file I

returned the papers asking the Mamlatdar to get the boundaries of the C.T.S.Nos. in question by referring to the original tippans and report.

19. On 2-12-1936 Chandulal plff-firm stated in

P.77 file I.

in writingto the Mamlatdar that he would give up the portion of the land shown by the surveyor to be encroached area in the plot C.T.S.No.3852B/1-1 . P.77 file I

19. On or about 24-12-1936 the Mamlatdar, Gadag, reported to the Assistant Collector III Division that the boundaries of C.T.S.No.3852B/1-1 had been already fixed by referring to the original tippans and again verified and that the owner gave consent to give up the portion encroached upon. P,79 file I

20. On 4-3-1937 the Assistant Collector forwar-ded the papers to the Collector observing that as the area encroached upon formed part of a strip of public road, enquiry under section 37 Bombay L.R.C. may be held.

21. 31-3-1937, the Collector requested the A.C. to get a sketch prepared and to record the statement of the owner of C.T.S.No.3852A/1 so that only in case there was a dispute regarding the ownership of the encroached area, an enquiry under section 37 Bombay L.R.C. might be held. On 9-4-1937 the Assistant Collector asked the Mamlatdar to do the needful. P.81 & 83 file

22. On 28-4-1934 Chandulal for plff's firm stated in writing before the Mamlatdar that he was willing to pay a reasonable price for the encroached area. On 18-5-1937 the Mamlatdar submitted a report to the Assistant Collector that a sketch (P.91) had been prepared and the owner admitt-ed the encroachment. P.89 file I.

23. On 23-5-1937 the Assistant Collector forwarded the papers with a sketch to the Collector observing that in view of the admission of the owner of C.T.S.No.3852A/1, inquiry under section 37 Bom L.R.C. was unnecessary and that if the compound wall was removed the owner would be put to loss. P.96 file I.

24. On 31-6-1937/ 8-6-1937 the Collector returned the papers to the A.C. observing that the owner of C.T.S. No.3852A/1 did not definitely agree to pay the occupancy price from the land encroached upon and that only in case P.105 file

13

he agreed, draft notification under section 37(5) Bom. L.R.C. should be submitted. The Collector further - observed that as the encroached area appeared to be part of Provincial road, the Executive Engineer, Dharwar should be consulted. On 11-6-1937 the Accistant Collector forwarded the papers to the Executive Engineer for remarks accordingly.

25. On 10th July 1937, the Executive Engineer, Dharwar, Division, wrote in reply to the Assistant Coll. III Dn., that the land encroached upon belonged to the P.W.D.; that it was at the junction of the Gadag-Pala

P. file I

Badami and the Karwar-Bellary road and therefore, it was necessary to retain it to have a clear view of the roads at the junction in these days of heavy traffic. On - 13-7-1937 the Assistant Collector sent the papers to the Mamlatdar for inquiry regarding the willingness of the

Reverse of P.107 file I.

owner to pay O.P. etc.

20. On 10-9-1937 Pandulal brother of Chandulal stated in writing before the Mamlatdar that he and - Chandulal were undivided brothers and as the latter ~~xx~~ was seriously ill, he would gave the statement on ~~his~~ his brother's behalf. Pandulal stated that he was willin

P.121 file I

to pay O.P. etc only if the Government paid the panch price for the area encroached upon Government and merge in the Pala-Badami road.

26. On 17th September 1937 the Mamlatdar submitte a report to the Prant III Division that Pandulal on

P.123

behalf of plf's firm stated that he was willing to pay the O.P.(price) for the encroached area, provided -

Sketches at P.91 & 93.

Government gave him the price for the land A.B.C.D. in the sketch (P.91 and 93) merged in the road to the west of the plots. The area merged was 143 sq.yds and that the panch valuation was Rs.324 and the O.P. of the - encroached area to the north of the plots was Rs.405/-. The Mamlatdar recommended that only the balance should

be recovered from the plaintiff.

27. On 15-10-1937 the Prant Officer requested the D.I.L.R. to report after ~~personal~~ personal inspection and measurement whether the portion A.B.C.D. in the sketches P.91 & 93 merged in the road really belonged to the encroacher, and if possible to state when and how this portion came to be included in the Pala-Badami road. Reverse of P.1 file I.

28. On 7-3-1938, the D.I.L.R.Submitted a report in reply to the Prant Officer that the correct area to the north of the C.T.S. plots whown in red and blue, encroached upon Karwar Bellary road by the holder of C.T.S. No.3852A/1 ~~was~~ was 78 Sq.yds and not 180 sq.yds as stated by the surveyor at page 69 file I, and it consisted of a compound wall and some open space to the south and measured 100' by 14'. The D.I.L.R? further reported that the portion marked blue in the sketch at page 131 was merged in the Pala--Badami road long since and was being used as a big guttar, and measured 153 sq. yds (28'-6" X 15') so far as it adjoined the C.T.S. plot 3852A/1. The D.I.L.R. observed that the holder claimed compensation in respect of the portion merged in lieu of the price he has to pay to Government for the encroachment of 78 sq.yds, but his claim was barred by time as the C.T.S. work in Gadag was done in 1914-15 and the western boundary of S.No.177 has since then been shown to extend so far as the thick blackline in the sketch (P.131). According to the measurement taken in 1938 the total area merged in the S.No.was the whole piece marked blue in the sketch (P.131). The D.I.L.R., therefore, requested for sanction to correct the D.S.O. records accordingly. The D.I.L.R. added that the piece marked green in the wketch (P.131) and lying to the north of the C.T.S. No.3852B/1-1 was an open space and no action for correction of the record was necessary. He pointed out that the northern boundary of C.T.S.No.3852A/1,3852B/1-1,3852B/1-2, 3852B/1-3 and 3852B/1-4 was wrongly shown in the C.T.S. of 1914. P.148-149 fil

as running straight from A to C (sketch P.131) withou reference to the previous surveys and that the - decision of the inquiry officer in confirming the - boundaries accordingly was invalid, particularly - particularly because all plff plots were then formed part of R.S.No.177 which was still agricultural. (since the Collector gave sanction to convert the land to N.A.use only in 1936) and that therefore the E.O. had no power to settle the boundaries of such land under the provisions of the Land Revenue Code.

29. On 8-4-1938, the Assistant Collector forwarded the papers to the Mamlatdar to report after taking the statement of the holder of C.T.S.No.3882A as to whether

P.150 file I

he was willing to pay compensation for the encroached area 78 Sq .yds irrespective of his claim to compensation for the area merged in the road. Accordingly on 25-5-1938 the statement of Pandulal (for plff firm) was recorded before the Mamlatdar to the effect that

P.159

he was willing to pay compensation of Rs.175-8-0 from the encroached area (to the north of C.T.S.No.3882A/1 and that he would take action for the area merged in the Pala-Badami road. On 25th May 1938, the Mamlatdar reported to the P.O. that the encroaher was willing to

P.165 file I.

pay the compensation of Rs:175-8-0 for the encroached area.

30. On 31-5-1938 the A.C. forwarded the papers to the Collector with a report that the encroacher was willing to pay Rs.175-8-0 compensation for the encroach

P.167 file I.

-ed area and that the contention of the Executive Engineer that the encroachment should be removed was not well-founded and it lay well beyond the alignment of the road and was not likely to be needed for public purpose.

31. On 14-1-1939 the Collector consulted the Executive Engineer who on 25th January 1939 replied

that the encroachment must be got removed. P.171,173 file Do.

32. On the 8th March 1939 the Collector passed the order to the effect that the owner of C.T.S.No. 3852A/1 of Gadag had encroached upon the Karwar - Bellary road over an area of 78 sq.yds; that the P.175 file I. encroacher admitted the encroachment and requested for its grant on O.P. and rent; that according to the Executive Engineer, the encroachment must be removed. As regards the claim of the ownership of C.T.S.No.3852A/1 in respect of the piece of land marked by the letters A.B.C.D. in the sketch (P.161,163); the land was merged in the Pala-Badami road even before the completion of - the City survey in 1916 and that the western boundary of the above C.T.S.No. was shown as terminating along the thick line B.C. (in the sketch P.161,163) at the time when the C.T.S. work was done in 1914-15 and that his claim was, therefore, barred by time.

33. On 15-3-1939 the A.C. requested the Mamlatdar to issue notice of eviction under section 202 Bom.L.R.C.(reverse of page 175 file I) and proposed the levy of fine and rent. Accordingly on 5-4-1939, Chandulal for plff firm was served with the notice of eviction. On 28th April 1939 the Mamlatdar reported to the P.O. that though the plff was served with the notice, the encroachment was not removed and that the N.A. assessment would come to Rs.6-12-0 for 9 years and the fine should be Rs. Rs.7-8-0. P.177 file I P.187 file I

34. On 30-4-1939 the A.C. requested the Collector for orders to get the encroachment removed through Govt agency at a cost not exceeding Rs.10/-. On 4-5-1939 the Collector gave the necessary sanction. Reverse of P. 187 & 189 file I

35. On 5- -1939 plff gave notice of his - intention to file a suit under section 80 C.P.C. and the same was accepted by the Collector on 14-6-1939. In the notice it has been contended that the sanad issued - P.197-199 P.193 file I

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at the city survey in respect of C.T.S.No.3852A/1 included the 78 sq.yds said to be encroached upon.

[On 28-6-1939 the Collector forwarded the papers to the D.I.L.R. for offering remarks on the grounds

Reverse of P.193. urged in the notice.

36. On 3rrd July 1939, the D.I.L.R.submitted the report that the inquiry officer had no powers in 1914 to settle the boundaries of agricultural lands and that the plots in S.No.177 were agricultural - lands till the date of the Collector's order (Viz. 6-10-1926) when permission to convert the land to N.A. use was granted and that therefore, the sanad which showed that the encroached area was included in the C.T.S.No.3852A/1 & 3852B/1-1 was wrongly - issued. The D.I.L.R. pointed out the boundaries were required to be determined according to revision survey of 1877-1878 as it was done by him in detecting the encroachment; that there was a mistake on the part of the surveyors that the survey No.177 was included in the C.T.S. limits under section 126 Bom. L.R.C. but that no agricultural land so included - would come under C.T.S. law until it was used for N.A. purposes (Para 6 P.1 of the C.T.S. manual). The D.I.L.R. observed that so far as the land merged in the Pala-Badami road was concerned, 153 Sq.yds. as marked by the letters A.B.C.D. in the sketch - (P.161) had been merged in the road which was in existence even prior to the introduction of Revision of 1876-77 and that the merger must have been taken place more than 25 years ago; that there was no record in this respect and that at any rate the claim of plff to that piece of land has been extinguished by time.]

33. On 18-12-1939 the Collector of Dharwar after consulting the District Government Pleader referred

the matter again to the D.I.L.R.. On 21-12-1939 the D.I.L.R. replied that the area of 78 sq.yds (encroached area) was included in the sketch drawn on the sanad - issued to the owners of the plot and in the area of 1815 sq.yds noted in the sanad. The D.I.L.R. observed that the sketch accompanying the sanad (on the reverse of the - sanad) was prepared in accordance with the C.T.S. map in which part of the public road area (78 sq.yds) was wrongly shown to be included in the private property i.e.3852A & confirmed by the E.O. (but the E.O. had no power to deal with the agricultural land). The D.I.L.R. pointed out that the Collector gave permission to make N.A. use of 1815 sq. yds plus 162 sq.yds only out of the private land R.S.No.177 and not out of a portion of the public road. The D.I.L.R. added that the N.A. permission granted from time to time was based on the unauthorised C.T.S. maps prepared in 1915-16. P.43 file II. (P.229 C.T.S.sketch

38. On 15th November 1941 the Collector ordered as - follows:- "S.No.177 of Gadag which is in C.T.S. limits has been laid out into building plots. On inquiry it is found that the boundaries of the agricultural S.No. were changed at the time of the C.T.S. inquiry of 1914-15 even though the C.T.S. law was not applicable to the survey No. which was then an agricultural land. The Collector, tare- -fore in exercise of the powers conferred by the Land Revenue Code was pleased to direct that the inquiry - officers' order fixing the C.T.S. boundary of the - agricultural S.No. should be set aside and the boundaries of the agricultural S.No. should be restored as shown in the sketch P.~~121~~. It is also seen from the papers that there are disputes regarding the ownership of lands shown in green and red in the sketch. The Grant Officer is - requested to hold an inquiry under section 37 L.R.C. and to decide the ownership of the labds. In the cases - where encroachments on Government sites are decided - proposals for levy of rent and fine should be submitted. As regards the blue portion which is said to have been

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included in the road, if the ownership is decided to be of Government, proposals should be submitted to correct the map of agricultural S.Nos. and to issue a K.J.P. The orders passed under this office No.N.C.R.218 of 8-3-1939 should be stayed (C.T.S.para 27 above).

39. On 9-6-1942 the Assistant Collector III Cl., held a formal inquiry under section 37 Bom.L.R.C. Plff relied upon a sale-deed dated 19th August 1938 and the sanad dated 16-3-1930. The A.C. decided that the strip of land shown in blue out of R.S.No.177 and comprised in - between the dotted line forming the boundary of the survey No.177 according to the survey Tippan and the thick blue line forming the actual Wahivat boundary of the said S.No. originally formed part of that S.No., but was merged in the Pala-Badami road for a long time and was being treated as a part of that road. The A.C. observed that the very fact that in 1914 when the C.T.S. work was done, the - western boundary of the S.No. was shown to terminate along the thick continuous line A.B. in the sketch, shows that the right of the claimant has been lost by prescription.

P.115-119 & 121-123 File III.

P. Loose file IV.

As regards the portions in red and blue in the - sketch, the A.C. found them to be Government property - forming part of the Karwar-Bellary road. He observed that the owners of the C.T.S. plots in the S.No. relied upon sale-deeds, but those deeds gave them rights to land lying within the boundary of the S.No.177 and that boundary - terminated at the dotted line in the sketch. Therefore, they could not have title to the area ~~forming~~ falling outside the ambit or periphery represented by the dotted line. The A.C. found that the encroachment in C.T.S.Nos. 3852A/1 and 3852B/1-1 was 78 and 129 Sq. yds respectively.

The A.C. ordered that the encroachment in C.T.S.No. 3852A/1 may be regularised on payment of O.P. and after de-roading the portion of the encroachment after consultin the Executive Engineer and that the other encroachment should be removed.

Loose file

40. On 4th September 1942 Mohanlal Chandulal as wahivatdar of the firm 'Tukaram Narasingrao' filed an appeal to the Collector, Dharwar, from the above mentioned order of the Assistant Collector dated 9-6-1942. Loose file.

41. On 8th October 1942, the Collector rejected the appeal. The Collector observed that the sale-ddeds relied upon by the appellant only established the plff's claim only to the portions out of R.S.No.177 and the appellant is not entitled to any area outside the boundary of R.S. No.177.

42. Plff appears to have filed a further appeal to the Bombay Revenue Tribunal which however was rejected. P.4 [illegible] the pla[illegible]opy

43. On 10-2-1943 Mohanlal Chandulal on behalf of plff firm was served with notice of eviction under section 202 of the L.R.C. Loose file.

44. On 8-3-1943 Mohanlal as Wahivatfar of the plff's firm Tukaram Narasingrao gave notice of suit under section 80 C.P.C. to the Collector who received the same on 9-3-1943 and accepted the same on 11-3-1943. P.loose file

45. On 17-6-1943 the plff filed the present suit for (a) declaration that plff's family is the owner of suit property & (2) perpetual injunction restraining the deft from interferring with the enjoyment of the suit property, by Plff's family, the order of the B.R.T. being illegal etc., and (3) for costs and other reliefs.:-

Proposed Grounds of Defence.

Notice. The relief of injunction prayed for in the suit is not mentioned in the notice of suit dated 8-3-1943 given by the plff. It may, therefore, be urged that the notice of suit is bad and the plff's suit is not maintainable.

Merits. The grounds on which plff contends that (1) his family is the owner of suit property viz.78 sq.yds & 129 sq.yds in C.T.S.No.3852A/1 and 3852B/1-1 respectively shown in red and blue in the sketch at page 131 of file I

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and (2) that the orders of the revenue authorities are ultra vires and illegal, are given in para (5) (a to d) of the plaint. The main contentions made in para 5B of plaint ~~is~~ are that the sites in disputes were granted to the plff's family on altered assessment being fixed in respect of them and the order made at the time of the city survey inquiry at Gadag in aoout 1920 and the Sanad issued in respect of 1815 sq.yds X 162 sq.yds out of R.S.No.177 and the sketch on that sanad are proof of such a grant. The plff, therefore, contends that in view of such a grant, the orders of the revenue authorities are ultra vires and illegal.

4 Now it may be urged in reply that what was granted to plff's predecessors in title viz. Hansraj and ~~x~~ Malsi was a piece of land measuring ~~1815~~ 1815 Sq. yds X 162 sq.yds out of agricultural R.S.No.177 and not any portion of Government Karwar Bellary road. The sanad itself is clear on the point. But the real mistake that was committed at the time of the C.T.S. in 1914-15 was that a wrong sketch ~~was~~ was prepared and the then C.T.S. Officer wrongly thought that the suit sites formed part of the land R.S.No.177 which had been purchased by plff's family and in respect of which altered assessment was fixed. This mistake was first found by the maintenance surveyor in 1938 at the time of remeasurement made under the instructions of the D.I.L.R. who ~~suspected~~ reported in his endorsement No.274 of 20-11-1937 (P.127 and reverse) that the old sheet prepared at the time of the ~~City~~ agricultural survey inquiry for the new sheet prepared at the time of the City S. enquiry differed. On 22-1-1938 and 23-2-1938 the maintenance surveyor submitted reports showing the details of mistake in the C.T.S. maps (P.139 to 147 file I). On 7-3-1938 the D.I.L.R. submitted a report to the Assistant Collector III Dn., (P.149 file I) and in para 6 of his report he says that it was wrong that during the survey of 1914-15 the northern boundary of

C.T.S.No.3852A/1 and 3852B/1-1 of and it was shown as xxx running straight from A to C in the wketch at page 131 with out regard to the previous surveys and that the inquiry officers's decision in confirming the boundary accordingly was not also ~~not~~ valid, because all the plots were at the time of the decision of the inquiry were forming part of agricultural S.Nos. and consequently the A.C. had no powers to settle the boundaries of such agricultural S.Nos.. The D.I.L.R. relied upon para 6 P.1 of the C.T.S. Manual and section 131 of the Bombay L.R.C. (P.195 file I). According to him the boundaries of the agricultural R.S.No. 177 had to be determined according to the revision survey of 1877 and 1878 and the tippans and the inquiry officer had no power to hold inquiry in respect of the agricultural land and pass orders regarding the settlement of boundaries of such land. It may, therefore, be urged that the sketch prepared during the city survey of 1914-15 was wrong; that the inquiry officer had no power to deal with the land granted to plff's family as it was then agricultural and settle its boundary and that therefore the orders, if any, made by the A.C. with respect to the suit lands are ultra vires and illegal. The next point urged by the plff is that this suit site was granted to plff in view of the portion of land out of R.S.No.177 belonging to plff being merged in Pala-Badami road. There is no evidence to support this contention made by plff. Thirdly plff contends in para 5 that he has become owner of the suit sites by virtue of adverse possession. The wrong C.T.S. sketches were prepared only in about 1914-15. It was about 1918 that Hansraj and Malsi purchased 5 acres and 6 gunthas out of R.S.No.177 and it was on 21-6-1918 that the Collector gave permission to xxxx these two persons to build on an area of 1 acre and 11 gunthas and it was about 1925 that a compound wall was built by these two persons. The Sanad was issued in 1920 so that the building came into existence between 1920 and 1925. Till the constriction of the building

in para 5 (A & C) of plaint are denied.

5. The land purchased by plff was a part of agricultural land R.S.No.177 of Gadag and the grant of permission by the Collector to the plff to use the land thus purchased for building purposes related to a portion of agricultural land R.S.No.177. The area encroached by plff which forms part of Government road was not at all granted to plff. The allegations made in para 5(b) of the plaint regarding the grant of encroached portion are denied.

6. The city survey extracts referred to in para 5 (b) of the plaint and relied upon by 1ff are wrong and are not admitted. The land R.S.No.177 of Gadag out of which several plots including those mentioned in para 1 of plaint were formed was an agricultural land and the city survey law and rules could not apply to it. The City survey Inquiry Officer had also no power to deal with such agricultural land. ~~Any~~ Any inquiry made and any order passed by the City Survey Enquiry Officer in respect of Survey No.177 of Gadag is unlawful & unauthorised. The survey sketches prepared upon the basis of such inquiry and order are not correct and are not admitted.

7. The plaintiff is not entitled to any relief and it is submitted that the plff's suit should be dismissed with costs.

Civ. Rule 6.

ಮುಕ್ಕಾಮು ನಿಲ್ಲಿ ನಿ॥

ದಿವಾಣಿ ಮುಕದಮೆ ನಂಬರು ಸನ್ ೧೯೩ ಪೈಕಿ

ವಾದಿ

ವಿರುದ್ಧ

ಪ್ರತಿವಾದಿ.

ಇವನಿಗೆ.

ಸಲುವಾಗಿ

ದಾವೆಯನ್ನು ಮಾಡಿರುವ ಕಾರಣ, ಸದರೀ ದಾವೆಗೆ ಜವಾಬು ಕೊಡಲಿಕ್ಕೆ ಈ ಸಮನಿನಿಂದ ನಿನಗೆ ಸಮನು ಮಾಡಲ್ಪಟ್ಟದೆ, ನೀನು ಸ್ವತಃ ಯಾ ವ್ಯಾಜ್ಯವನ್ನು ಪೂರಾ ತಿಳಿಸಿಕೊಂಡಂಥ ವಕೀಲನ ಮುಖಾಂತರವಾಗಿ ಸನ್ ೧೯೩ ನೇ ಇಸವಿಯ ನವೆಂಬರ್ ತಿಂಗಳಕ್ಕೆ ಸರಿಯಾದ ಮೊದಲನೇ ಕೋರ್ಟಿನಲ್ಲಿ ಬೆಳಿಗ್ಗೆ ೧೦ ಗಂಟೆಗೆ ಈ ಕೋರ್ಟಿನಲ್ಲಿ ಹಾಜರಾಗಬೇಕು. ವಕೀಲನ ಮುಖಾಂತರವಾಗಿ ಹಾಜರಾದರೆ, ಈ ದಾವೆಗೆ ಸಂಬಂಧಿಸಿದ ಯಾವತ್ತು ಮುಹತ್ವದ ಸವಾಲುಗಳಿಗೆ ಜವಾಬು ಕೊಡಲಿಕ್ಕೆ ಅವನು ಸಮರ್ಥನಾಗಿರಬೇಕು, ಅಥವಾ ಅಂಥ ಸವಾಲುಗಳಿಗೆಲ್ಲ ಜವಾಬು ಕೊಡಲಿಕ್ಕೆ ಸಮರ್ಥನಾದ ಮತ್ತೊಬ್ಬನು ಆ ವಕೀಲನ ಕೂಡ ಬರಬೇಕು. ನೀನು ಹಾಜರಾಗುವ ಬಗ್ಗೆ ನೇಮಿಸಿದ ದಿವಸಕ್ಕೆ ದಾವೆಯು ಅಪ್ಪೈರಿನ ಕೂಗಿಯುಕ್ಕೆ ಗೊತ್ತು ಪಡಿಸಿರುವ ಕಾರಣ, ಆ ದಿವಸ ನಿನ್ನ ಜವಾಬಿನ ಪ್ರಕಾರವಾಗಿ ನೀನು ಆಶ್ರಯಿಸಲಿಕ್ಕೆ ಅಪೇಕ್ಷಿಸುವಂಥ ಯಾವತ್ತು ಸಾಕ್ಷಿದಾರರನ್ನು ಮತ್ತು ಎಲ್ಲ ದಸ್ತೈವಜುಗಳನ್ನು ಹಾಜರು ಪಡಿಸಲಿಕ್ಕೆ ನೀನು ಸಿದ್ಧನಾಗಿರಬೇಕು.

ಈ ಲೇಖದಿಂದ ನಿನಗೆ ತಿಳಿಯಪಡಿಸುವದೇನಂದರೆ, ಸದರೀ ಬರೆದ ದಿವಸ ನೀನು ಹಾಜರಾಗದಿದ್ದರೆ ನಿನ್ನ ಪರೋಕ್ಷದಲ್ಲಿ ದಾವೆಯ ಚೌಕಸಿಯಾಗಿ ಆದು ನಿರ್ಣಯಿಸಲ್ಪಡುವದು.

ಮತ್ತು ನಿಮಗೆ ನೋಟೀಸು ಕೊಡುವದೇನಂದರೆ ಬಜಾವಣಿಯ ಸಲುವಾಗಿ ನೀವು ಪತ್ತೆಯನ್ನು ನಿರ್ದಿಷ್ಟ ಮಾಡಿದ ತಾರೀಖಿನೊಳಗಾಗಿ ತುಂಬಿಕೊಡಲಿಕ್ಕೆ ತಪ್ಪಿದರೆ, ಪ್ರತಿವಾದಿಯೆಂಬ ನಿಮ್ಮ ಪಕ್ಷವನ್ನು ತೆಗೆದು ಹಾಕಲಾದೀತು.

ಈ ಸೊತ್ತು ಸನ್ ೧೯೩ ತಿಂಗಳಿನ ತಾರೀಖಿನಲ್ಲಿ
ನಮ್ಮ ಸಮಕ್ಷ ಸಾಡಿ ಮತ್ತು ಕೊಟ್ಟೇನ ಮೊಹರು ಮಾಡಿ ಕೊಡಲ್ಪಟ್ಟದೆ.

ಮುಖಾಂತರ—

ಜಜ್ಜ.

ಬೇಲೀಫನ ಹತ್ತರ—

ಸೂಚನೆ.—(೧) ನಿನ್ನ ಸಾಕ್ಷಿದಾರರು ತಾವಾಗಿ ಹಾಜರಾಗಲಿಕ್ಕಿಲ್ಲವಂದು ನಿನಗೆ ಸಂಶಯವಿದ್ದರೆ, ವೆಚ್ಚಕ್ಕೆ ಅವಶ್ಯವಾದ ಹಣವನ್ನು ನೀನು ಭರಣಾ ಮಾಡಿ ಕೋರ್ಟಿಗೆ ಅರ್ಜಿಯನ್ನು ಮಾಡಲಾಗಿ ಈ ಕೋರ್ಟಿನಿಂದ ನಿನಗೆ ಸಾಕ್ಷಿಯ ಸಮನು ದೊರೆಯಬಹುದು. ಅದರಿಂದ ಯಾವನಾದರೂ ಸಾಕ್ಷೀದಾರನು ಬಲಾತ್ಕಾರದಿಂದ ಹಾಜರ ಮಾಡಲ್ಪಡುವನು, ಮತ್ತು ಆ ಸಾಕ್ಷಿದಾರನ ಕೈಯಿಂದ ಹಾಜರು ಮಾಡಿಸಲಿಕ್ಕೆ ನಿನಗೆ ಹಕ್ಕು ಇರುವಂಥ ಯಾವದೊಂದು ದಸ್ತೈವಜು ಅವನ ಕೈಯಿಂದ ಹಾಜರು ಮಾಡಿಸಲ್ಪಡುವದು.

ತಾರೀಖು—

(೨) ವಾದಿಯು ಬೇಡುವದನ್ನು ನೀನು ಒಪ್ಪಿಕೊಳ್ಳುತ್ತಿದ್ದರೆ ಈ ದಾವೆಯ ವೆಚ್ಚ ಸಹಿತ ಆ ಹಣವನ್ನು ನೀನು ಕೋರ್ಟಿನಲ್ಲಿ ವಸೂಲು ಕೊಡಬೇಕು; ಅದರಿಂದ ನಿನ್ನ ಸ್ವಂತಕ್ಕಾಗಲೀ ಸೊತ್ತಿಗಾಗಲೀ ರುದ್ಧವಾಗಿ ಅಥವಾ ಇವೆರಡೂ ಬಗೆಯಾಗಿ ಆಗಬಹುದಾಗಿರುವ ಹುಕುಮನಾಮೆಯ ಅಮಲ ಬಜಾವಣಿಯು ತಪ್ಪುವದು.

ನಾಝರ.

Copy of plaint

L.C.Suit No.210 of 1943.

In the Court of the First Class Sub-Judge,

at Dharwar.

Plff:-Mohanlal Chandulal Chavan, age 20, caste Kshatria, occupation trade - Vahivatdar of Messrs. Tukaram Narasingrao Chavan of Gadag

Vs.

Defts:- 1 The Province od Bombay.

2. Narasingrao Tukaram Chavan, age 70, caste Kshtriya, occupation trade of Gulburga, Nizam's dominions.
3. Gopalrao Tukaram Chavan, age 60, caste and occ. Do of Gadag.
4. Pandulal Tukaram Chavan, age 48, caste occupation and residence Do.
5. Shivaramrao Tukaram Chavan, age 45, caste Occupation and residence Do.

Claim Rs.65/- for both.

The plaintiff above named begs to state and submit as follows:-

1. The property in suit is as below.

Northern portion of C.S.Nos.3852/1A and 3852B/1-1 of Gadag, marked in red in the notice of the Mamlatdar, Gadag, produced herewit Approximate area being 78 sq. yards and 129 Sq.yards respectively. The two C.T.S.Nos. adjoin each other and are bounded on the north by the Karwar Bellary road, and on the west by the Pala Badami road.

2. City S.Nos.3852/1A and 3852B/1-1 and other plots in R.S.No.177 originally belonged to one Basappa Hombal. Various building plots were made in R.S.No.177 and they were sold to several persons. Plff's family purchased the two plots with the bungalow thereon on 11-8-1930 for Rs.13,500/- and since then the plots as well as the building are in their possession.

3. From time immemorial, plff's predecessors in interest and plffs have been in possession and vahivat of the plots including the portion marked in red in the notice as full and absolute owners.

4. In 1942, the revenue authorities, under the wrong impression that the portion marked in red is an encroachment, started proceedings in respect of the alleged encroachment. After a superficial inquiry, it was held by the revenue authorities that the red- marked portion is an encroachment. The matter was taken to the revenue tribunal, but there also the decision was confirmed. In pursuance of the order.

notice has been issued to plff to remover the alleged encroachment, in February 1943.

5. The order of the Revenue Tribunal is ultra vires and illegal, and all further actions of removal etc., contemplated by the revenue authorities are equally ultra vires, and null and void, on the following among other grounds.

a). The suit property is of the ownership of plff and his predecessors in interest from time immemorial, and it has been in their continuous possession all along. Deft No.1 or its - officers have no power to declare that the same does not belong to the plff.

b) Further, the revenue authorities have ignored their own previous order, which is clearly mentioned in the City Survey extract that the alleged encroached portion was granted to plff's predecessors on the assessment being proportionately enhanced, and all along the enhanced assessment is being recovered. In view of the previous order, the present order of the revenue authorities and the revenue tribunal is ultra vires. It appears that some portion of the plots on the western side was taken by Government and included in the Pala-Badami road, and in view of the immemorial possession of the suit site by plff and his predecessors in interest, their title thereto was confirmed.

C). In any event and without prejudice to the above stated grounds, it is submitted that plff and his predecessors in - interest have acquired full ownership on the suit site by adverse possession for more than 60 years, and on this ground as well as the order of the Revenue Tribunal is ultra vires.

d). On the plots, C.T.S.Nos.3852/1A and 3852/1-1 there is a solid double storied building worth more than Rs.15000/- with a compound wall 5 feet in height around the bungalow on three sides. According to the decision of the Revenue Tribunal, the road would almost touch on the north the bunglow, which has been standing there for a number of years. It would necessitate the demolition of the present building and the construction of an altogether new bunglow, a consequence which is most - unjust and inequitable. Hence it is submitted without prejudice to the other objections that deft No.1 by the conduct its officers and its latches and acquiescence, is estopped and

precluded from taking any action prejudicial ~~against~~ to plff. In the light of these facts, the order of the Revenue Tribunal is - illegal, arbitrary and highly inequitable.

6. In view of thr order of the Revenue Tribunal being ultra vires deft 1 is not entitled to proceed to carry out the said order Sihce already a notice has been issued to plff that the alleged encroachment should be removed, it has been necessary to file this suit for declaration that the suit property is of the ownership of plff and for consequential injunction.

7. Cause of action accrued in February 1943 when the notice aforesaid was received by the plff.

8. Notice of the suit as required by law has been duly deliver -ed to the Collector, Dharwar.

9. Defts 2 to 5 are members of plff's family and they are made formal parties.

10. The suit being for declaration and consequential relief, a court-fee of Rs.5/- is paid for the suit. For purposes of jurisdi -ction the suit is valued at Rs.65/-. The suit being against the Province of Bombay, the suit is filed in this court.

11. The plaintiff prays:-

a). That a declaration be granted that plff's family is the owner of the suit property.

b) That in view of the order of the Revenue Tribunal being ultra vires and null and void, deft No.1 be restrained by a perpetu al injunction from executing the order of the Revenue Tribunal and interferring with the possession of plff's family.

c) All costs of suit be awarded.

d) Any other reliefs to which plff may be entitled in law, justice and equity be awarded.

Dharwar,

16-6-1943. Sd/ Mohanlal Chandulal Chavan.

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Below No.L.A.W.430 dated 14th April 1943, from the Collector, Dharwar

No. 238

Dharwar 26 April 1943.

Returned with compliments:-

2. This is an encroachment case. A formal inquiry under Section 37(2) of the Land Revenue Code was held by the Assistant Collector in connection with the encroachments on the public road. The Assistant Collector has come to the conclusion that there has been encroachment on Government lands in the case of five city survey numbers to the extent of Sq. yards mentioned against them. This order was passed on 9-6-1942, and an appeal was preferred against this order by the owners of these C.T.S.Nos.; and the Collector by his order of 8th October 1942, confirmed the Assistant Collector's order and rejected the appeal on 8-10-1942.

It appears, these claimants preferred an appeal to the Revenue Tribunal against the order of the Collector. This appeal was summarily rejected by the Tribunal. The owner of the two C.T.S.Nos. X 3852/1A 3852/1/1B in dispute has given a notice through their pleader of his intention to file a suit against Government, in order to establish their claim to the area that has been held as an encroachment.

I have carefully gone through the facts of this case and the reasons given by the Assistant Collector in support of his findings that the disputed portions do form encroachments upon the Government road. His conclusions are well justified by the materials on record; and it appears to me that the claim of the applicant i.e. the firm of Tukaram Narasingarao Chavan is unsustainable. His contention that the property was purchased under a bona-fide belief that the portion now held to be an encroachment did form part of the C.T.S.No. purchased by him under the sale-deed, is untenable. The sale-deed relied upon by the claimant is of a recent date i.e. of 1927. Moreover, the site in question was shown as Government property, as being included in the road in 1914-15. There appears to be, therefore, no force in the contention of the applicant.

It is submitted, therefore, that the proposed suit, if filed by the applicant, can be successfully defended.

APP 26 1943

Seen
Await till 15.5.43
after which his letter
may be sent to the Tc
for record. The notice was
received on 12-3-43
29-4-43 Collector

District Government Pleader.

No. L.A./. 430.
Dharwar, 10th June 1943.

Forwarded with the papers of the case in 3 files r/.
to the Treat Officer, IIIrd Division Dharwar, for record.

O.C. Sugar Cycolla

J. B.

for Collector of Dharwar

No. CTS(G.) 327
Dharwar 14-6-43

Forwarded to the Mamlatdar Gadag for compliance. record

Treat officer for h
14/6. Dharwar

Read
21/6/43
Dy
Mo

MO-65-8

This is an encroachment suit. S.N.177 of Gadag, Distt. Dharwar, which is within C.T.S. limits has been laid out into building plots. Plaintiff is owner of two plots near a public road. In a formal inquiry under section 37(2) of the Land Revenue Code the Assistant Collector held that plaintiff had encraoched on the public road to the extent specified. Plaintiff appealed to the Collector and the Revenue Tribunal, but without success. Hence ~~Now~~ this suit for a declaration of his ownership and injunction.

p.251 file I.

In a C.T.S. inquiry in 1914-15 the encroachment area was wrongly mapped out as falling in the agricultural S.N.177. In 1922 plaintiff's predecessor-in-interest was granted permission to build and a sanad was issued under section 48 of the Land Revenue Code. The sanad was accompanied by a sketch, which included the present encroachment area. Subsequently plaintiff built a bungalow on his plot, but only the compound wall thereof falls in the encroachment area.

p.43 File II

On these facts plaintiff alleges grant, adverse possession and estoppel.

There cannot be a grant because no sanad was issued under section 133 of the L.R.C. in 1914-15, and the City Survey Enquiry Officer indeed had no authority to define the boundaries of an agricultural land like S.No.177. C.T.S. law did not apply until the land was converted to non-agricultural uses, an event which took place much later.

330

12-1-44

The sanad under section 48 L.R.C. granted in 1922 did not create a title where there was none previously. Section 48 deals only with assessment and alteration thereof with reference to the use of the land. If the use is unauthorized, Govt. may evict any time within the period of limitation.

L. G. 10 JAN 1944

There can be no adverse possession, because till about 1925 the site was vacant.

Neither a wrong City Survey map, nor a granting of permission for non-agricultural use on plaintiff's own application, would in law create any estoppel.

RLA

Answer 8/1

No. 183 B/10 1/44 Secy R.D. 11-1-44

Sanction may be accorded to the defence of the suit in accordance with the accompanying brief.

28/12

In the Court of the First Class Subordinate Judge,

at Dharwar.

L. C.Civil Suit No.210 of 1943.

Mohanlal Chandulal Chavan. .... Plaintiff;

versus

The Province of Bombay and four others..... Defendants.

Claim Rs.65/- for both.

Written Statement of the defendant is as follows:-

1. The description of the suit property as in plaint paragraph 1 is not admitted. The suit property, namely 78 sq.yds. and 129 sq.yds., forms part of a Government road called Karwar-Bellary Road. Plaintiff has encroached upon the said road on the northern side of C.T.S.Nos.3852A/1 and 3852B/1-1 to the extent of 78 and 129 sq.yds. respectively. The encroached area does not form part of the two City Survey numbers.

2. Defendant denies that plaintiff or his predecessors-in-~~interest~~ title have been owners of or in possession of the suit property. Defendant also denies any adverse possession of the plaintiff. The allegations in plaint paragraphs 5A to C in this respect are denied.

3. The land purchased by plaintiff was a part of agricultural land R.S.No.177 of Gadag and the grant of permission by the Collector to the plaintiff to use the land thus purchased for building purposes related to a portion of agricultural land R.S.No.177. The area encroached by plaintiff which forms part of Government road was not at all granted to plaintiff. The allegations made in para.5(b) of the plaint regarding the grant of encroached portion are denied.

4.. The City Survey extracts referred to in paragraph 5 (b) of the plaint and relied upon by plaintiff are wrong and are not admitted. The land R.S.No.177 of Gadag out of which several plots including those mentioned in paragraph 1 of plaint were formed was an agricultural land and the city survey law and rules could not apply to it. The City survey Inquiry Officer had also no power to deal with such agricultural land.

Any inquiry made and any order passed by the City Survey Enquiry Officer in respect of Survey No.177 of Gadag is unlawful and unauthorised. The survey sketches prepared upon the basis of such inquiry and order are not correct and are not admitted.

5. The allegations in plaint paragraph 5(b) are denied. There was no grant to plaintiff or his predecessors-in-title of the suit property either at the city survey inquiry or by the Sanad issued under section 48 of the Land Revenue Code or at any other time.

6. Defendant denies that Government is estopped ~~as alleged~~ from taking action. There is a compound wall in the suit property, but not plaintiff's bungalow.

7. Plaintiff is not entitled to any relief, and the suit should be dismissed with costs.

District Government Pleader,
Dharwar.

I, District Government Pleader, Dharwar, do hereby declare that what is stated in paragraphs 1 to 7 above is true according to the information received and believed to be true. This verification is made at on the day of 194

District Government Pleader,
Dharwar..

45
37.

Suits.
Dharwar.
Encroachment on Government land.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 275.

Bombay Castle, 13th January 1944.

Letter from the Collector of Dharwar, No. L.A.W. 430, dated the 15th November 1943—

IN THE COURT OF THE FIRST CLASS SUB-JUDGE, DHARWAR.
Civil Suit No. 210 of 1943.

Mohanlal Chandulal Chavan .. Plaintiff;
versus
The Province of Bombay and four others .. Defendants.
Claim—Rs. 65.

Forwarding papers in the suit noted in the margin; and requesting sanction to its defence.

Endorsement by the Commissioner, Southern Division, No. L.S.T. 294, dated the 25th November 1943—Forwarding the above with his concurrence.

Memorandum to the District Government Pleader, Dharwar, No. 274, dated the 13th January 1944—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

original P. N. MOOS,
Secretary to Government.

G. R., No. 275, L. D., dated the 13th January 1944.

To

*The Revenue Department,
*The Commissioner, Southern Division,
*The Collector of Dharwar,
The District Government Pleader, Dharwar (with two copies of the brief).

*With a copy of the brief.

No. of 1944.

Copy forwarded for information and guidance to

submitted after issue file Addl P-A- 13/3

13/3

9/3 A.G. 11/3

34

47 39

L. C. SUIT No. 210 OF 1943.

Mohanlal Chandulal Chavan, a firm of Messrs. Tukaram Narasingrao Chavan of Gadag .. .. .. Plaintiff;

versus

The Province of Bombay and four others .. Defendant No. 1.

Chronological Statement of facts.

Sketches at pages 131 and 161 and the report of the District Inspector of Land Records, Dharwar, No. 274, dated 7th March 1938, is at page 148 (reverse) and page 149, of file I.

The suit relates to the encroachment on a portion of Government land forming part of the Karwar-Bellary road measuring 78 square yards by 129 square yards in City Survey Nos. 3852-A/1 and 3852-B/1/1 in the town of Gadag, district Dharwar. The encroachments are shown in red and blue respectively in the sketch at page 131. The land encroached upon is at the junction of the Gadag-Pala-Badami road and the Karwar Bellary road. On the red portion is a compound wall and some space towards the south. This red portion measuring 100′ × 14′ is a triangular piece. The portion shown in green is an open site and is also triangular.

Page 17, Gadag Mamlatdar's report, dated 17th May 1936.

2. The City Survey Nos. 3852-A/1 and 3852-B/1-1 and several other City Survey numbers originally formed part of the Agricultural Revision Survey No. 177 of Gadag. The total area of the agricultural land appears originally to be about 11 acres and 3 gunthas. The area of 8 gunthas and 64 square yards out of this agricultural land shown in blue towards the west of the abovementioned City Survey numbers in the sketch at page 131 was merged in the Pala-Badami road. Part of the area so merged and adjoining to the west of the City Survey No. 3852-A/1 is 153 square yards as shown in the sketch at page 161 by the letters ABCD. It appears from the report of the District Inspector of Land Records, Dharwar, No. 274, dated 3rd July 1939, that between 1877 and 1914, the Public Works Department widened the Pala-Badami road which was in existence even prior to the introduction of revision survey in or about 1876-77 and while so widening a portion of the private agricultural land Revision Survey No. 177 measuring 8 gunthas 64 square yards was wrongly included in the said road. The report further discloses that the City Survey map prepared in 1914 shows that the portion of the private agricultural land Revision Survey No. 177 merged in the Pala-Badami road has been altogether excluded from the said survey number. As per tippan extract, the boundary of the agricultural land should have been extended up to the black dotted line shown in the sketches at pages 129 and 223, while as a matter of fact, the boundary of the land in the actual possession and wahivat extends only as far as the thick black line with the result that there is a difference in the Revenue and City Survey records. Big trees have been planted on the road and there is also a guttar as shown by the red dotted line at page 129 of the sketch. The report of the District Inspector of Land Records further states that there is no record to show when this land was acquired by the Public Works Department. Therefore, the District Inspector of Land Records reported that the claim of the owner of Revision Survey No. 177 (including plaintiff) to the strip of the agricultural land thus merged in the Government Pala-Badami road was extinguished by lapse of time.

p. 195 reverse.

Please see sketch at pages 223 and 129.

pp. 7 and 9.

3. It may here be noted that the land Revision Survey No. 177 was kept and shown in the revenue records as agricultural till the year 1926 when the Collector gave in his No. N.A.S.R. 29 of 6th October 1926 permission for use of the land for non-agricultural purposes. One Hansraj Chapsi and Malashi Lakshamshi were the joint purchasers in 1918 of 5 acres 6 gunthas assessed at Rs. 5-9-0 out of agricultural Revision Survey No. 177 of Gadag from Basappa *bin* Andaneppa Hombal, the original owner. On 29th April 1918, the purchasers applied to the Collector, Dharwar, for permission to build on a portion of the land, 1 acre 11 gunthas a compound wall. On 21st June 1918, the Collector granted permission on certain conditions. The applicants subsequently applied on 26th October 1921 for permission to build a structure on 15 gunthas out of 1 acre and 11 gunthas as previously allowed. This permission was granted on 20th May 1923. On 4th July 1922, a sanad under section 48, Bombay Land Revenue Code, was granted to Hansraj and Malsi. The sanad originally contained permission to build on an area of 1,815 square yards out of Revision Survey No. 177 on an annual payment of non-agricultural assessment of Rs. 18-12-0.

p. 198 of D. I. L. R.'s report of 3rd July 1939.

pp. 39 and 40 of file III.

Sketch at page 6 of file II, blue portion in 177 (page 1 of file II).

p. 28 of file II.

See the plan on the reverse of the sanad page 43 of file II.

4. In 1925, Hansraj and Malsi erected a compound wall (which is still in existence on the encroached area). On 24th February 1925, the surveyor of Gadag City submitted a report to the Mamlatdar, Gadag, that the said two persons had used as area of 172 square yards in excess of that for which non-agricultural assessment had been granted. On 16th May 1925, the Mamlatdar, Gadag, submitted a report to the Prant Officer, III Division, that the said two persons were using an area of 162 square yards (19 and 41 square yards) in excess of that for which non-agricultural permission had been granted but they may be so allowed to do on an additional payment of altered assessment of Rs. 1-11-0. On 22nd May 1925, the District Deputy Collector, III Division, agreed with the proposal of the Mamlatdar and forwarded the matter to the Collector for sanction.

p. 46 of file II.

p. 48 of file II.

Reverse of page 49 of file II.

5. On 10th June 1925, the Collector sanctioned the proposal of the District Deputy Collector stated above and obviously granted permission to use the excess area of 162 square yards for non-agricultural purposes. Accordingly in the sanad granted on the 4th July 1922 (page 43 of file II) the excess area of 162 square yards was also mentioned and the sanad was modified. An additional copy of the annual non-agricultural assessment sanad was given to Hansraj and Malsi.

p. 52 of file II.

6. It may be noted here that it was found in 1939 as reported by the District Inspector of Land Records on 22nd December 1939 in reply to the reference made by the latter that the area of 78 square yards now in dispute was included in the sketch drawn on the sanad dated 4th July 1920 and in the area of 1,815 square yards for non-agricultural use of which permission had been granted by the Collector. This sketch according to the District Inspector of Land Records' report was prepared in accordance with the City Survey map in which part of the public road area (78 square yards now in dispute) was wrongly shown as included in the private property i.e. (agricultural survey No. 177) and confirmed by the Inquiry Officer.

p. 43 do.

(*Vide* map at page 22 of file I.)

7. On 24th April 1926, the papers were sent to the District Inspector of Land Records for correction of survey records. On 10th February 1927 the correction was made.

Reverse of page 52 of file II.

8. On 12th February 1927, Hansraj and Malsi applied to the Mamlatdar, Gadag, stating that the City Survey No. 3852-A had been entered in their joint names, and that they divided the plot between themselves, the northern half going to the share of Hansraj and the southern going to

Do. do.

the share of Malsi; that they were to transfer their shares and requested, therefore, that their names should be shown in the City Survey records separately in respect of each share. Accordingly the papers were sent to the City Surveyor, Gadag, who submitted a report to the Mamlatdar, Gadag, on 20th March 1928 that Hansraj's share was numbered as City Survey No. 3852-A/1 and that of Malsi was numbered as City Survey No. 3852-B/2.

p. 149 of file II.

9. Subsequently it appears that in 1928–29 plot City Survey No. 3852-A/1 (now in suit) was sold by Hansraj to one Visanji Kuvarji Shet who, in turn, sold it on 22nd April 1930 to one Madivalappa Basappa Shettar from whom the present plaintiff purchased this plot, i.e. City Survey No. 3852-A/1, where a bungalow and compound wall exist and which is shown in the sale-deed to measure 981 square yards and City Survey No. 3852-B/1-1 which is a vacant site and which is shown to measure 8 gunthas and 23 square yards in the sale-deed and as sold for Rs. 13,500 on 19th August 1930.

Sale-deed pages 115-119 of loose file.

10. It may be noted here that it was in 1930 that the Collector gave permission to use City Survey No. 3852-B/1-1, i.e. 177-1A for non-agricultural purposes and accordingly on 16th May 1930, a sanad under section 48, Bombay Land Revenue Code, was issued to Visanji Kuvarji in respect of this plot measuring 9 gunthas and 96 square yards as shown in the sanad of that date. The measurements in the sanad and the sale-deed of 22nd April 1930 do not appear to tally. It may also be noted that on the reverse of page 121 (loose pages) a sketch of the City Survey No. 3852-B/1 is given, but it purports to show the northern boundary adjoining the Karwar-Bellary road in a straight line which is wrong according to the present sketches of 1939.

pp. 121-123 of loose file.

11. On 9th February 1936, the Surveyor submitted a report to the District Inspector of Land Records that while measuring the plots it was found that there was a difference in the original area of the Survey No. 177 and its present area. The real total area of Survey No. 177 was 11 acres 3 gunthas, but as a matter of fact about 16 gunthas 47 square yards out of it on the western sides of the survey number as shown by the dotted line in the sketch at page 42/A had been merged in the Government road (Pala-Badami road), thus the balance of the area of the said survey number remained only 10 acres 26 gunthas and 74 square yards. The Surveyor further pointed out that a part of the area of the road to the north of the survey number and the plots City Survey Nos. 385/A.G. 1 and 3852-B/1/1 now in suit measuring 1 guntha 57 square yards and 1 guntha 39 square yards had been included in the said plots (of course by mistake). The Surveyor, therefore, recommended that action should be taken in this respect. He also pointed out that the several differences in the records and the actual state in respect of the area.

Statement at page 42/B.

Sketch at page 42.

12. On 14th July 1936, the Mamlatdar, Gadag, issued a notice to Chandulal Tukaram Chavan, Wahivatdar of the plaintiff firm, stating in writing before the Mamlatdar that he was a purchaser of the two plots City Survey Nos. 3852/A-1 and 3852-B/1-1 with the buildings existing thereon from one Madivalappa Sudi and his sale was dated 19th August 1930. He, therefore, did not know of any encroachment and if there was any encroachment, he was willing to pay fine and ground rent.

13. On 24th September 1936, the Mamlatdar, Gadag, submitted a report to the Assistant Collector, III Division, that the City Survey Nos. 3852-A/1 and 3852-B/1-1 belonged to the plaintiff, that Chandulal, the Wahivatdar of plaintiff-firm, stated that if the building existed on the area, he would pay occupancy price but if only the compound wall existed

p. 67.

he would only pay rent. The Mamlatdar further reported that City Survey No. 3852-B/1-1 was an open space and that therefore the area encroached upon in this plot should be excluded from the plot and the City Survey map corrected accordingly. The Mamlatdar further reported that in respect of City Survey No. 3852-A/1, the owner had encroached upon Government road to the north of the plot by constructing a compound wall. The Mamlatdar recommended that the site encroached upon might be given to the plaintiff on payment of occupancy price, fine and rent as the encroachment had been made several years ago and as the sanads regarding city survey had been issued showing the encroached portion to be in possession of the holder, but as the encroacher was unwilling to pay occupancy price, fine and rent, the encroachment may be ordered to be removed. The area encroached upon was reported to be 180 square yards. p. 69 of file.

14. On 7th November 1936, the Assistant Collector returned the papers asking the Mamlatdar to get the boundaries of the City Survey numbers in question by referring to the original tippans and report.

15. On 2nd December 1936, Chandulal, plaintiff-firm, stated in writing to the Mamlatdar that he would give up the portion of the land shown by the surveyor to be encroached area in the plot City Survey No. 3852-B/1-1. p. 77 do.

16. On or about 24th December 1936, the Mamlatdar, Gadag, reported to the Assistant Collector, III Division, that the boundaries of City Survey No. 3852-B/1-1 had been already fixed by referring to the original tippans and again verified and that the owner gave consent to give up the portion encroached upon. p. 79 do.

17. On 4th March 1937, the Assistant Collector forwarded the papers to the Collector observing that as the area encroached upon formed part of a strip of public road, enquiry under section 37, Bombay Land Revenue Code, may be held.

18. On 31st March 1937, the Collector requested the Assistant Collector to get a sketch prepared and to record the statement of the owner of City Survey No. 3852-B/1 so that only in case there was a dispute regarding the ownership of the encroached area, an enquiry under section 37, Bombay Land Revenue Code, might be held. On 9th April 1937, the Assistant Collector asked the Mamlatdar to do the needful. pp. 81 and 83 do.

19. On 28th April 1934, Chandulal for plaintiff's firm stated in writing before the Mamlatdar that he was willing to pay a reasonable price for the encroached area. On 18th May 1937, the Mamlatdar submitted a report to the Assistant Collector that a sketch (page 91) had been prepared and the owner admitted the encroachment. p. 89 do.

20. On 23rd May 1937, the Assistant Collector forwarded the papers with a sketch to the Collector observing that in view of the admission of the owner of City Survey No. 3852-A/1, inquiry under section 37, Bombay Land Revenue Code, was unnecessary and that if the compound wall was removed the owner would be put to loss. p. 96 do.

21. On 31st June 1937/8th June 1937, the Collector returned the papers to the Assistant Collector observing that the owner of City Survey No. 3852-A/1 did not definitely agree to pay the occupancy price from the land encroached upon and that only in case he agreed, draft notification under section 37 (5), Bombay Land Revenue Code, should be submitted. The Collector further observed that as the encroached area appeared to be part of Provincial road, the Executive Engineer, Dharwar, should be consulted. On 11th June 1937, the Assistant Collector forwarded the papers to the Executive Engineer for remarks accordingly. p. 105 of file.

p. 107 of file I.

22. On 10th July 1937, the Executive Engineer, Dharwar Division, wrote in reply to the Assistant Collector, III Division. that the land encroached upon belonged to the Public Works Department ; that it was at the junction of the Gadag-Pala-Badami and the Karwar-Bellary road and therefore it was necessary to retain it to have a clear view of the roads at the junction in these days of heavy traffic. On 13th July 1937, the Assistant Collector sent the papers to the Mamlatdar for inquiry regarding the willingness of the owner to pay occupancy price etc.

Reverse of page 107 of file I.

p. 121 of file I.

23. On 10th September 1937, Pandulal, brother of Chandulal, stated in writing before the Mamlatdar that he and Chandulal were undivided brothers and as the latter was seriously ill, he would give the statement on his brother's behalf. Pandulal stated that he was willing to pay occupancy price etc. only if the Government paid the *panch* price for the area encroached upon Government and merged in the Pala-Badami road.

p. 123.
Sketches at pages 91 and 93.

24. On 17th September 1937, the Mamlatdar submitted a report to the Prant Officer, III Division, that Pandulal on behalf of plaintiff's firm stated that he was willing to pay the occupancy price for the encroached area, provided Government gave him the price for the land A B C D in the sketch (pages 91 and 93) merged in the road to the west of the plots. The area merged was 143 square yards and that the *panch* valuation was Rs. 324 and the occupancy price of the encroached area to the north of the plots was Rs. 405. The Mamlatdar recommended that only the balance should be recovered from the plaintiff.

Reverse of page 105 of file I.

25. On 15th October 1937, the Prant Officer requested the District Inspector of Land Records to report after personal inspection and measurement whether the portion A B C D in the sketches, pages 91 and 93, merged in the road really belonged to the encroacher, and if possible to state when and how this portion came to be included in the Pala-Badami road.

pp. 148-149 of file I.

26. On 7th March 1938, the District Inspector of Land Records submitted a report in reply to the Prant Officer that the correct area to the north of the City Survey plots shown in red and blue, encroached upon Karwar-Bellary road by the holder of City Survey No. 3852A/1 *was 78 square yards and not 180 square yards as stated* by the Surveyor at page 69, file I, and it consisted of a compound wall and some open space to the south and measured 100′ by 14′. The District Inspector of Land Records further reported that the portion marked blue in the sketch at page 131 was merged in the Pala-Badami road long since and was being used as a big guttar, and measured 153 square yards (28′-6″ × 15′) so far as it adjoined the City Survey plot No. 3852A/1. The District Inspector of Land Records observed that the holder claimed compensation in respect of the portion merged in lieu of the price he has to pay to Government for the encroachment of 78 square yards, but his claim was barred by time as the City Survey work in Gadag was done in 1914-15 and the western boundary of survey No. 177 has since then been shown to extend so far as the thick blackline in the sketch (page 131). According to the measurement taken in 1938 the total area merged in the survey number was the whole piece marked blue in the sketch (page 131). The District Inspector of Land Records, therefore, requested for sanction to correct the D. S. O. records accordingly. The District Inspector of Land Records added that the piece marked green in the sketch (page 131, and lying to the north of the City Survey No. 3852B/1-1 was an open space and no action for correction of the record was necessary. He pointed out that the northern boundary of City Survey Nos.1852A/1, 3852B/1-1, 3852B/1-2, 3852B/1-3 and 3852B/1-4

was wrongly shown in the City Survey of 1914, as running straight from A to C (sketch page 131) without reference to the previous surveys and that the decision of the inquiry officer in confirming the boundaries accordingly was invalid, particularly because all plots then formed part of Revision Survey No. 177 which was still agricultural (since the Collector gave sanction to convert the land to non-agricultural use only in 1936), and that therefore the Executive Officer had no power to settle the boundaries of such land under the provisions of the Land Revenue Code.

27. On 8th April 1938, the Assistant Collector forwarded the papers to the Mamlatdar to report after taking the statement of the holder of City Survey No. 3882A as to whether he was willing to pay compensation for the encroached area 78 square yards irrespective of his claim to compensation for the area merged in the road. Accordingly on 25th May 1938, the statement of Pandulal (for plaintiff firm) was recorded before the Mamlatdar to the effect that he was willing to pay compensation of Rs. 175-8-0 from the encroached area to the north of City Survey No. 3852A/1 and that he would take action for the area merged in the Pala-Badami road. On 25th May 1938, the Mamlatdar reported to the Prant Officer that the encroacher was willing to pay the compensation of Rs. 175-8-0 for the encroached area.

p. 150 of file I.

p. 159.

p. 165 of file I.

28. On 31st May 1938, the Assistant Collector forwarded the papers to the Collector with a report that the encroacher was willing to pay Rs. 175-8-0 compensation for the encroached area and that the contention of the Executive Engineer that the encroachment should be removed was not well-founded and it lay well beyond the alignment of the road and was not likely to be needed for public purpose.

p. 167 do.

29. On 14th January 1939, the Collector consulted the Executive Engineer who, on 25th January 1939, replied that the encroachment must be got removed.

pp. 171 and 173 do.

30. On the 8th March 1939, the Collector passed the order to the effect that the owner of the City Survey No. 3852A/1 of Gadag had encroached upon the Karwar-Bellary road over an area of 78 square yards; that the encroacher admitted the encroachment and requested for its grant on occupancy price and rent; that according to the Executive Engineer the encroachment must be removed. As regards the claim of the ownership of City Survey No. 3852A/1 in respect of the piece of land marked by the letters A B C D in the sketch (pp. 161, 163), the land was merged in the Pala-Badami road even before the completion of the City Survey in 1916 and that the western boundary of the above City Survey number was shown as terminating along the thick line B C (in the sketch pages 161, 163) at the time when the City Survey work was done in 1914-15 and that his claim was, therefore, time barred.

p. 175 do.

31. On 15th March 1939, the Assistant Collector requested the Mamlatdar to issue notice of eviction under section 202, Bombay Land Revenue Code (reverse of page 175, file I), and proposed the levy of fine and rent. Accordingly on 5th April 1939, Chandulal for plaintiff firm was served with the notice of eviction. On 28th April 1939, the Mamlatdar reported to the Prant Officer that though the plaintiff was served with the notice, the encroachment was not removed and that the non-agricultural assessment would come to Rs. 6-12-0 for 9 years and the fine should be Rs. 7-8-0.

p. 177 do.
p. 187 do.

32. On 30th April 1939, the Assistant Collector requested the Collector for orders to get the encroachment removed through Government agency at a cost not exceeding Rs. 10. On 4th May 1939, the Collector gave the necessary sanction.

Reverse of pages 187 and 189 of file I.

pp. 197-199
p. 193 of file I.

33. On 5th June 1939, plaintiff gave notice of his intention to file a suit under section 80, Civil Procedure Code, and the same was accepted by the Collector on 14th June 1939. In the notice it has been contended that the sanad issued at the city survey in respect of City Survey No. 3852A/1 included the 78 square yards said to be encroached upon.

p. 43 of file II.

34. On 18th December 1939, the Collector of Dharwar after consulting the District Government Pleader referred the matter again to the District Inspector of Land Records. On 21st December 1939, the District Inspector of Land Records replied that the area of 78 square yards (encroached area) was included in the sketch drawn on the sanad issued to the owners of the plot and in the area of 1815 square yards noted in the sanad. The District Inspector of Land Records observed that the sketch accompanying the sanad (on the reverse of the sanad) was prepared in accordance with the City Survey map in which part of the public road area (78 square yards) was wrongly shown to be included in the private property i.e. 3852A and confirmed by the Executing Officer (but the Executing Officer had no power to deal with the agricultural land). The District Inspector of Land Records pointed out that the Collector gave permission to make non-agricultural use of 1815 square yards plus 162 square yards only out of the private land Revision Survey No. 177 and not out of a portion of the public road. The District Inspector of Land Records added that the non-agricultural permission granted from time to time was based on the unauthorised City Survey maps prepared in 1915-16.

(page 229, CTS. Sketch).

35. On 15th November 1941, the Collector ordered as follows :—"Survey No. 177 of Gadag which is in City Survey limits has been laid out into building plots. On inquiry it is found that the boundaries of the agricultural survey number were changed at the time of the City Survey inquiry of 1914–15 even though the City Survey law was not applicable to the survey number which was then an agricultural land. The Collector, therefore, in exercise of the powers conferred by the Land Revenue Code was pleased to direct that the inquiry officers' order fixing the City Survey boundary of the agricultural survey number should be set aside and the boundaries of the agricultural survey number should be restored as shown in the sketch. It is also seen from the papers that there are disputes regarding the ownership of lands shown in green and red in the sketch. The Prant Officer is requested to hold an inquiry under section 37, Land Revenue Code, and to decide the ownership of the lands. In the cases where encroachments on Government sites are decided proposals for levy of rent and fine should be submitted. As regards the blue portion which is said to have been included in the road, if the ownership is decided to be of Government, proposals should be submitted to correct the map of agricultural survey numbers and to issue a kamjasti patrak the orders passed under this office No. N.C.R. 218 of 8th March 1939 should be stayed (C. S. S., paragraph 27 above).

pp. 115-119 and 121-123 of file III.

36. On 9th June 1942, the Assistant Collector, III Division, held a formal inquiry under section 37, Bombay Land Revenue Code, plaintiff relied upon a sale-deed dated 19th August 1930 and the sanad dated 16th March 1930. The Assistant Collector decided that the strip of land shown in blue out of Revision Survey No. 177 and comprised in between the dotted line forming the boundary of the survey No. 177 according to the Survey Tippan and the thick blue line forming the actual Wahivat boundary of the said survey number originally formed part of that survey number, but was marged in the Pala-Badami road for a long time and was being treated as a part of that road. The Assistant Collector observed that the very fact that in 1914 when the

p. Loose file IV.

City Survey work was done, the western boundary of the survey number was shown to terminate along the thick continuous line A B in the sketch shows that the right of the claimant has been lost by prescription.

As regards the portions in red and blue in the sketch, the Assistant Collector found them to be Government property forming part of the Karwar-Bellary road. He observed that the owners of the City Survey plots in the survey number relied upon sale-deeds, but those deeds gave them rights to land lying within the boundary of the Survey No. 177 and that boundary terminated at the dotted line in the sketch. Therefore, they could not have title to the area falling outside the ambit or periphery represented by the dotted line. The Assistant Collector found that the encroachment in City Survey Nos. 3852-A/1 and 3852-B/1-1 was 78 and 129 square yards respectively.

The Assistant Collector ordered that the encroachment in City Survey No. 3852A/1 may be regularised on payment of occupancy price and after de-roading the portion of the encroachment after consulting the Executive Engineer and that the other encroachment should be removed. Loose file.

37. On 4th September 1942, Mohanlal Chandulal as Wahivatdar of the firm "Tukaram Narasingrao" filed an appeal to the Collector, Dharwar, from the above-mentioned order of the Assistant Collector dated 9th June 1942. Loose file.

38. On 8th October 1942, the Collector rejected the appeal. The Collector observed that the sale-deeds relied upon by the appellant established the plaintiff's claim only to the portions out of Revison Survey No. 177 and the appellant is not entitled to any area outside the boundary of Revision Survey No. 177.

39. Plaintiff appears to have filed a further appeal to the Bombay Revenue Tribunal which however was rejected. p. 4 of the plaint copy.

40. On 10th February 1943, Mohanlal Chandulal on behalf of plaintiff firm was served with notice of eviction under section 202 of the Land Revenue Code. Loose file.

41. On 8th March 1943, Mohanlal as Wahivatdar of the plaintiff firm Tukaram Narasingrao gave notice of suit under section 80, Civil Procedure Code, to the Collector who received the same on 9th March 1943, and accepted the same on 11th March 1943. p. loose file.

42. On 17th June 1943, the plaintiff filed the present suit for (1) declaration that plaintiff's family is the owner of suit property, and (2) perpetual injunction restraining the defendant from interfering with the enjoyment of the suit property by plaintiff's family, the order of the Bombay Revenue Tribunal being illegal etc., and (3) for costs and other reliefs.

Grounds of Defence.

There are no technical grounds of defence.

2. *Merits.*—The boundaries of survey No. 177 should be proved strictly in order to show that the suit property (78 square yards plus 129 square yards) falls outside the survey number. The sale-deeds produced on behalf of the plaintiff would show that no land was ever conveyed by or to anybody, which lay outside the survey number. Plaintiff would thus be unable to prove title to land falling outside the survey number or the city survey plots in which it has been laid out.

3. Plaintiff's next contention is that the suit property was granted to his predecessors. This question of grant would have to be considered first with reference to the city survey inquiry of 1914-15, and secondly, with

~~55~~ 47

reference to the sanad granted under section 48, Land Revenue Code, in 1922.

4. In 1914, Survey No. 177 was apparently included in the City Survey limits. Chapter X of Land Revenue Code provides for lands within the sites of towns and cities. Survey No. 177 had not been turned to non-agricultural use in 1914-15. Therefore although it was within the City Survey limits, the Survey or Inquiry Officers had no jurisdiction with regard to it. The provisions of the City Survey law apply only to non-agricultural land (*see* paragraph 6 of City Survey Manual). Therefore the Survey Officers in 1914-15 could not have decided that the owners of survey No. 177 were entitled to the suit property. A person owning survey No. 177 could not spell out title to or grant of land falling outside the survey number from maps prepared by the Survey Officers.

5. Then as regards the sanad granted under section 48 of the Land Revenue Code, a distinction has to be made between grant of land and assessment or alteration thereof for purposes of revenue. In the latter no question of title is considered. This is clear from section 48 itself. Section 48 would not create title where there was none previously. To make this more clear, section 48 may be contrasted with section 133. Therefore, there was no grant in the sanad. If the sketch accompanying the sanad included what is now the suit property, it only meant that the holder of the sanad was using the property and further wanted to use it for a non-agricultural purpose. So there is no grant in section 48.

6. Plaintiff's allegation of immemorial user and adverse possession is without substance. The suit property was an open site till 1922, which is within the statutory period.

7. Plaintiff has suggested that he was granted the suit property or that his title thereto was confirmed in 1922 on account of (i) the loss to plaintiff of the western portion of

Survey No. 177 by reason of merger in the Pala-Badami road, and (*ii*) immemorial user. There was no user as pointed out above, and there is no evidence of the alleged intention of Government as in (*i*).

8. Plaintiff has also raised the question of estoppel, laches and acquiescence. The latter do not constitute estoppel and are immaterial so long as there is a statutory law of limitation. Then again estoppel cannot be said to have arisen on account of the incorrect and unauthorized City Survey maps. It cannot also have arisen on account of the sanad under section 48, because after all the sanad was invited by the plaintiff (or his predecessors) and also because as considered previously, the section 48 sanad does not make any representations or guarantees as to title.

9. The plaintiff's bungalow is not affected by the Government decision about encroachment.

New
S. Dave 14/2/1964

Suits.
Dharwar.
Encroachment on Government land.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No.8327
Bombay Castle, 28th November 1944.

Read Government Resolution, Legal Department, No.275, dated the 13th January 1944.

Letter from the District Government Pleader, Dharwar, No.468, dated the 4th October 1944 stating that the suit noted in the margin was decided by the First Class Sub-Judge, Dharwar, on the 29th September 1944, when the following order was passed:-

In the Court of the First Class Sub-Judge, Dharwar.	
Civil Suit No.210 of 1943.	
Mohanlal Chandulal Chavan. .. Plaintiff;	
versus.	
The Province of Bombay & four others. .. Defendants.	
Claim Rs. 65.	

"Suit dismissed under Order 9, Rule 8 of the Civil Procedure Code. Plaintiff to bear his own costs and pay the costs of the defendant.

RESOLUTION:- The result of the suit is recorded.

By order of the Governor of Bombay,

for P. N. MOOS,
Secretary to Government.

To
The Revenue Department,
The Commissioner, S.D.,
The Collector of Dharwar.

Recd. with D.G.P. Dharwar's letter No 558 dt. 14/1/44 (Filed in S.Dwr. 11/42)

L.C.Suit No.210 of 1943.

In the court of the First Class Sub-Judge, at Dharwar.

S 1

Plff:- Mohanlal Chandulal Chavan, age 20, ~~x~~caste Kshatriya, occupation trade, Wahivatdar of Messrs. Tukaram Narasingrao Chavan of Gadag

Vs.

Defts:- 1. The Province of Bombay.

2. Narasingrao Tukaram Chavan, age 70, caste Kshatriya, occupation trade of Gulburga Nizam's dominions.

3. Gopalrao Tukaram Chavan, age 60 caste and occupation Do of Gadag.

4. Pandulal Tukaram Chavan, age 48, caste occupation and residence Do.

5. Shivaramrao Tukaram Chavan, age 45 caste occupation and residence Do.

Claim Rs.65/- for both.

The plaintiff above named begs to submit as follows:-

1. The property in suit is as follows:-

Northern portion of C.S.Nos.3852/1A and 3852B/1/1 of Gadag marked in red in the notice of the Mamlatdar, Gadag, produced here with. Approximate area being 78 sq. yds and 129 sq. yds respectively. The two C.T.S.Nos. adjoin each other and are bounded on the - north by the Karwar-Bellary road and on the west by the Pala-Badami road.

2. City Survey Nos.3852/1A and 3852, and other plots in 1/1 Revision Survey No.177 originally belonged to one Basappa Hombal. Various building plots were made in R.S.No.177 and they were sold to several persons. Plff's family purchased the two plots with the bungalow thereon on 11-8-1930 for Rs.13500/- and since then the plots as well as the building are in their possession.

3. From time immemorial plff's predecessors-in-~~title~~ - interest and plff have been in possession and wahivat of the plots including the portion marked in red in the notice as full and - absolute owners.

4. In 1942, the Revenue Authorities, under the wrong - impression that the northern portion marked in red is an encroachment started proceedings in respect of the alleged encroachment. After a superficial inquiry, it was held by the Revenue authorities that the red-marked portion is an encroachment. The matter was ~~tak~~ taken to the Revenue Tribunal, but there also the decision was

confirmed. In pursuance of the order, notice has been issued to the plff to remove the alleged encroachment, in February 1943.

5. The order of the Revenue Tribunal is ultra vires and illegal, and all further actions of removal, etc. contemplated by the Revenue Authorities are equally ultra vires and null and void on the following among other grounds.

a. The suit property is of the ownership of plff and his - predecessors in interest from time immemorial and it has been in their continuous possession all along. Deft No.1 or its officers have no - power to declare that the same does not belong to plff.

b. Further, the Revenue Authorities have ignored their own - previous order which is clearly mentioned in the City Survey extract, that the alleged encroached portion was granted to plff's predecessors on the assessment being proportionately enhanced, and all along the enhanced assessment is being recovered. In view of the previous order, the present order of the Revenue Authorities and the Revenue Tribunal is ultra vires. It appears that some portion of the plots on the Western side was taken by Government and included in the Pala Badami Road, and in view of the immemorial possession of the suit site by plff and his predecessors in interest, their title thereto was confirmed.

c. In any event, and without prejudice to the above stated grounds, it is submitted that plff and his predecessors in interest have acquired full ownership on the suit site by their adverse possession for more than 60 years, and on this ground as well ~~as~~ the order of the Revenue Tribunal is ultra vires.

d. On the plots, C.T.S.Nos.3852/1A and 3852/1/1 there is a solid double storied ~~bui~~ building worth more than Rs.15000/- with a compound wal_ 5 feet in height around the bungalow on three sides. According to the - decision of the Revenue Tribunal, the road would almost touch on the north, the bungalow which has been standing there for a number of years. It would necessiate the demolition of the present building and the construction of an altogether new bungalow, a consequence which is most unjust and - inequitable. Hence, it is submitted, without prejudice to the other - objections that deft 1 by the conduct of its officers and its latches and acquiescence, is estopped and precluded from taking any action prejudicial to plff. In the light of these facts the order of the Revenue Tribunal is illegal, arbitrary and highly inequitable.

6. In view of the order of the Revenue Tribunal being ultra vires deft No.1 is not entitled to proceed to carry out the said order. Since

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already a notice has been issued to plff that the alleged encroachment should be removed, it has been necessary to file this suit for a declaration that the suit property is of the ownership of the plff and for consequential injunction.

7. Cause of action accrued in February 1943 when the notice aforesaid was received by plff.

8. Notice of suit as required by law has been duly delivered to the Collector, Dharwar.

9. Defts 2 to 5 are members of plff's family and they are made formal parties.

10. The suit being for declaration and consequential relief, a court-fee of Rs.5/- is paid for the suit. For purposes of - jurisdiction the suit is valued at Rs.65/-. The suit being against the Bombay Province, the suit is filed in this court.

11. The plff prays:-

a. That a declaration be granted that the plff's family is the owner of the suit property.

b. That in view of the order of the Revenue Tribunal being ultra vires and null and void, deft No.1 be restrained by a perpetu -al injunction from executing the order of the Revenue Tribunal and interferring with the possession of the plff's family,

c. All costs of suit be awarded.

d. Any other reliefs to which mx plff may be entitled in law, justice and equity be awarded.

Dharwar,
16-6-1943.

Sd/ Mohanlal Chandulal Chavan.

In this, I Mohanlal Chandulal Chavan of Gadag, plff above named do hereby state on solemn affirmation that what is stated above is true to the best of my knowledge information and belief. In testimony whereof I have signed this at on 16-6-1943.

Sd/ Mohanlal Chandulal Chavan.

Drafted and presented by

Sd/ V.G.Jamkahndi
Pleader.

17-6-1943.

Examined and particulars ordered to be entered in the - Register of suits.

17-6-1943.

Sd/ N.S.Koneri.
Clerk of the court.

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Order.

Summons to defts for S.I.. Returnable on 21-7-1943.

21-6-1943. Sd/ A.C.Sequiera.

F.C.Sub-Judge.

The plaintiff is absent today. The application for adjournment given by his pleader has been rejected whereupon he gave a purshis of no instructions (Vide Ex.33). The application for adjournment was given against the explicit understanding tacitly arrived at the time of the last adjournment that the suit should either be heard or withdrawn. I cannot persuade myself to believe that the plff is really ill. No doubt the application is accompanied by a Doctor's certificate but I am not prepared to accept it at this stage. Had it not been for the understanding, no adjournment would have been granted last time. Under the circumstances of the case I have rejected the application for adjournment which has been presented. I pass the following order.

O R D E R.

Suit dismissed under Order 9 Rule 8 of the C.P.Code. Plff to bear his own costs and pay the costs of deft.

29-9-1944. Sd/ M.S.Bagali.

First Class Sub-Judge.

Bill of costs.

Plff.

Total costs Rs.23-8-0

Deft No.1(Govt).

1. Stamp fpr applns.	2-0-0	
2. Pleader's fee.	15-0-0	
	17-0-0	
Disallowed.	2-0-0	
Balance.	Rs. 15-0-0	

Defts 2 to 5.

Total Costs. Rs. [redacted]-

Sd/ K.R.Gadad.

Karkun.

Sd/ M.S.Bagali.

F.C.Sub-Judge.

10-10-1944.

S.L.W. 2/44

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